

## Message Text

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PAGE 01 STATE 073292  
ORIGIN EUR-12

INFO OCT-01 ISO-00 EB-08 L-03 JUSE-00 SS-15 SP-02  
NSC-05 COME-00 CIAE-00 INR-10 NSAE-00 /056 R

DRAFTED BY EUR/CAN;GJMONROE:JKB  
APPROVED BY EUR/CAN - JHROUSE  
EB/BP - MR. SHLENKER  
L/EB - SBENSON  
JUSTICE - ROSENTHAL/CIRA  
EUR - RDVINE (INFO)  
EB - JKATZ (INFO)

-----079781 221141Z /23

R 220241Z MAR 78  
FM SECSTATE WASHDC  
TO AMEMBASSY OTTAWA

C O N F I D E N T I A L STATE 073292

E.O. 11652: GDS

TAGS: ECIN, CA

SUBJECT: US/CANADIAN ANTITRUST TALKS

1. SUMMARY: LATEST IN A SERIES OF MEETINGS ON US/CANADIAN ANTITRUST COOPERATION TOOK PLACE ON MARCH 7, IN A POSITIVE ATMOSPHERE. DISCUSSIONS FOCUSED ON A JUSTICE DEPT PAPER ELABORATING ON VP MONDALE'S PROPOSAL FOR AN ARRANGEMENT ON PRIOR NOTIFICATION OF ANTITRUST ACTIONS. PROGRESS WAS MADE IN IDENTIFYING AREAS OF CONCERN TO BOTH SIDES AND HEADINGS FOR A POSSIBLE JOINT PAPER OUTLINING THE ELEMENTS OF A COOPERATIVE ARRANGEMENT WERE AGREED. MEMORANDA ON THESE TOPICS WILL BE PREPARED BY BOTH DELS AND EXCHANGED PRIOR TO THE NEXT MEETING SCHEDULED FOR LATE JUNE. WHILE A GOOD DEAL OF WORK REMAINS TO BE DONE, THERE IS A REASONABLE CHANCE THAT A WORKABLE ARRANGEMENT WILL EMERGE. END  
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PAGE 02 STATE 073292

SUMMARY.

2. CANADIAN AND US DELEGATIONS CHAIRED BY DEPT CONSUMER AND CORPORATE AFFAIRS DEP ASSIST MINISTER BERTRAND AND ASSISTANT ATTORNEY GENERAL SHENEFIELD MET AT THE JUSTICE DEPARTMENT ON MARCH 7 TO CONTINUE WORK ON ANTITRUST COOPERATION BEGUN DURING THE JUNE 1977 BELL VISIT. THE

DELEGATIONS FOCUSED ON VICE PRESIDENT MONDALE'S PROPOSAL FOR AN ARRANGEMENT ON PRIOR NOTIFICATION OF ANTITRUST ACTIONS.

A MEMORANDUM SETTING FORTH JUSTICE'S VIEWS ON THE TERMS OF REFERENCE FOR SUCH AN AGREEMENT SERVED AS THE STARTING POINT FOR THE DISCUSSION. (POUCHED TO EMBASSY)

3. US DEL BEGAN BY POINTING OUT THAT THE USG HAD NEVER CONSIDERED A SIMILAR ARRANGEMENT WITH ANY OTHER GOVERNMENT WHICH WOULD VOLUNTARILY LIMIT THE JUSTICE DEPARTMENT'S COMPULSORY PROCESS WHERE US PARENTS OF FOREIGN SUBSIDIARIES WERE CONCERNED. IT IS CLEAR THAT UNDER US LAW US PARENT COMPANIES MUST PRESENT INFORMATION IN THE POSSESSION OF THEIR SUBSIDIARIES. ON THE OTHER HAND, THE JUSTICE DEPT UNDERSTANDS CANADIAN VIEW OF JURISDICTION AND ACCEPTS THE FACT THAT CONFLICTS OF NATIONAL LAW WILL SOMETIMES ARISE. A COOPERATIVE APPROACH IS THEREFORE SUGGESTED, INVOLVING INITIAL US FORBEARANCE FROM COMPULSORY PROCESS REACHING FOR CANADA LOCATED DOCUMENTS IN RETURN FOR GOC UNDER-TAKINGS NOT TO FRUSTRATE INVESTIGATIONS UNLESS "PARAMOUNT NATIONAL INTEREST" IS INVOLVED.

4. CANADIAN REP BERTRAND SAID THAT THE GOC UNDERSTANDS THE US POSITION AND RECOGNIZES VP MONDALE'S PROPOSAL MAY BE AN OFFER WHICH "WE CANNOT REFUSE." CANADIAN REP STANFORD SAID ALTHOUGH GOC AS EMOTIONALLY ATTACHED TO THE CONFIDENTIAL

CONFIDENTIAL

PAGE 03 STATE 073292

IDEA OF ITS SOVEREIGNTY AS ANY OTHER COUNTRY, THE RECORD SHOWS CANADA HAS OVER THE YEARS ACQUIESCED IN CERTAIN TYPES OF EXTRATERRITORIAL APPLICATION OF US LAW. THE GOC MUST, HOWEVER, CONTINUE TO INTERPRET ITS VIEW OF CORRECT JURISDICTIONAL THEORY AND THUS MAY HAVE TO DENY THE JUSTICE DEPARTMENT ACCESS TO INFORMATION IN CANADA.

5. US DEL REITERATED ITS RECOGNITION THAT THERE WOULD BE SPECIAL CASES WHERE INFO COULD NOT BE AVAILABLE. IN THIS CONTEXT IT SHOULD BE NOTED THAT THE JUSTICE DEPARTMENT HAS NEVER GONE TO COURT TO SEEK INFORMATION OR DOCUMENTS FROM FOREIGN JURISDICTIONS WHEN BLOCKED BY THE FOREIGN GOVERNMENTS CONCERNED. IN DEVELOPING AN ARRANGEMENT ALONG THE LINES OF THE MONDALE PROPOSAL, WE WOULD, HOWEVER, NEED ASSURANCES THAT ALL US ANTITRUST INVESTIGATIONS WOULD NOT PRIMA FACIE BE MATTERS OF PARAMOUNT NATIONAL INTEREST FROM THE CANADIAN PERSPECTIVE. INDEED, WE WOULD HOPE THAT THERE WOULD BE VERY FEW CASES IN WHICH THE CANADIAN GOVT COULD NOT COOPERATE IN PROVIDING OR FACILITATING THE PROVISION OF AT LEAST PART OF THE INFORMATION REQUIRED BY JUSTICE. US REP GAVE EXAMPLES OF FACILITATION, I.E. US DEL WOULD EXPECT GOC ASSISTANCE IN BRINGING US-CANADIAN AGREEMENT

AND PROCEDURAL REQUIREMENT TO THE ATTENTION OF PROVINCIAL GOVERNMENTS WHO MAY BE ABOUT TO INVOKE BLOCKING STATUTES AND IN PROVIDING SIMILAR INFORMATION TO CANADIAN COMPANIES WHO RECEIVE VOLUNTARY INFORMATION REQUESTS FROM JUSTICE

AFTER NOTIFICATION TO GOC.

6. AFTER FURTHER DISCUSSION OF THE PROCEDURES JUSTICE FOLLOWS IN INITIATING AN INVESTIGATION AND THE VARIOUS KINDS OF ASSISTANCE THE GOC MIGHT PROVIDE, BOTH DELS AGREED THAT IT WOULD BE USEFUL TO DEVELOP A JOINT PAPER THAT WOULD FOCUS BOTH SIDES ON THE MAJOR ELEMENTS OF ANY COOPERATIVE ARRANGEMENT. SUCH A PAPER COULD EVENTUALLY TAKE THE FORM OF A MEMORANDUM OF UNDERSTANDING OR A JOINT PRESS RELEASE. CONFIDENTIAL

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PAGE 04 STATE 073292

SOME ELEVEN HEADINGS WERE IDENTIFIED WHICH IN THE AGGREGATE MIGHT FORM A WORKABLE ARRANGEMENT. EACH SIDE UNDERTOOK TO PREPARE MATERIAL FOR THOSE HEADINGS OF PARTICULAR INTEREST TO THEIR RESPECTIVE GOVERNMENT. THE MOST IMPORTANT HEADINGS WERE AS FOLLOWS (WITH DELEGATION ASSIGNED RESPONSIBILITY) (A) FORBEARANCE OF ENFORCEMENT WHEN THERE IS DEMONSTRABLE NATIONAL INTEREST - GOC; (B) FACILITATION - US; (C) NATIONALITY AND JURISDICTION - GOC; (D) TIMING AND MEANS OF CONSULTATION AND NOTIFICATION - US; (E) CONCEPT OF PARAMOUNT OR SUBSTANTIAL NATIONAL INTEREST - GOC; (F) METHODS OF OBTAINING INFORMATION - US; (G) CONFIDENTIALITY - US.

7. AS TO SCHEDULING, BOTH DELS FELT THAT THE ARRANGEMENT SHOULD NOT BE ADDRESSED IN FINAL FORM UNTIL AFTER THE URANIUM INVESTIGATION WAS RESOLVED. IT WAS THEREFORE AGREED THAT MATERIAL ON INDIVIDUAL TOPICS COULD BE EXCHANGED AS SOON AS POSSIBLE BUT THAT THE NEXT MEETING DRAWING TOGETHER THE DIMENSIONS OF A POSSIBLE ARRANGEMENT SHOULD BE HELD IN JUNE.

8. THE CONSULTATIONS CONCLUDED WITH A LENGTHY PRESENTATION BY JUSTICE REPS ON THE PRE-MERGER NOTIFICATION PROCEDURE AS PROVIDED FOR IN THE HART-SCOTT-RODINO ANTI-TRUST IMPROVEMENTS ACT OF 1976, WHICH JUSTICE EXPLAINED COULD NOT BE INCLUDED IN THE MONDALE PROPOSAL BECAUSE OF STATUTORILY IMPOSED TIME AND CONFIDENTIALITY CONSTRAINTS. THE CANADIAN DEL WAS CLEARLY INTERESTED IN EXPLORING THIS ISSUE FURTHER AND IT WAS ADDED TO THE LIST OF TOPICS FOR INCLUSION IN THE JOINT PAPER (AS A HEADING ENTITLED "CONCURRENT JURISDICTION ON MERGERS").

9. IN SUMMING UP THE RESULTS OF THE DISCUSSIONS, BOTH CONFIDENTIAL

CONFIDENTIAL

PAGE 05 STATE 073292

DELEGATIONS WERE STRUCK BY THE POSITIVE TONE CHARACTERIZING THE MEETING. A CANADIAN REP OBSERVED THAT BOTH COUNTRIES HAD AN OPPORTUNITY TO BREAK NEW GROUND IN THIS FIELD AND HE HOPED THAT NEITHER SIDE WOULD MISS THAT OPPORTUNITY. COMMENT: AS WITH THE URANIUM TALKS TWO WEEKS AGO, THIS MEETING TOOK PLACE IN A GREATLY IMPROVED ATMOSPHERE. CLEARLY, HOWEVER, FURTHER SUBSTANTIVE

PROGRESS DEPENDS ON SATISFYING JUSTICE DEPT'S REQUIREMENTS FOR CANADIAN ASSURANCES ALONG LINES OF PARA 4, ABOVE. WHILE A GOOD DEAL OF WORK REMAINS TO BE DONE, THERE IS A REASONABLE CHANCE THAT A WORKABLE ARRANGEMENT WILL EMERGE. VANCE

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## Message Attributes

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**Channel Indicators:** n/a  
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**Draft Date:** 22 mar 1978  
**Decaption Date:** 01 jan 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
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**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 20 Mar 2014  
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**Enclosure:** n/a  
**Executive Order:** GS  
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**Expiration:**  
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**Original Handling Restrictions:** n/a  
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**Review Markings:**  
Sheryl P. Walter  
Declassified/Released  
US Department of State  
EO Systematic Review  
20 Mar 2014  
**Markings:** Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014